

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: JAN 25 2008**

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MARTIN A. MARTINEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.
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:
: 07 Civ. 5811 (PAC)

: TRANSFER ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

The pending discovery requests, as set forth in Mr. Zelman's letter of January 20, 2008, and the Corporation Counsel's response of January 23, 2008, are disposed of as follows:

(1-2) The New York City Police Department is directed to produce any pictures or fingerprints of Mario Martinez it has in its possession, custody and control. If such documents are in the possession of the Queens District Attorney's Office or a Court file, then the City does NOT have them in its possession, custody and control; and, of course, cannot produce them. Plaintiff will have to use such other discovery methods and processes as are available to him in the circumstances.

(3) The New York City Police Department is directed to produce the fingerprint cards and photos of plaintiff Martin Martinez which it has in its possession, custody and control.¹

¹ The Court notes the City's response that it does not have fingerprint cards for either Mario or Martin Martinez. Instead, the City utilized the "live scan" method of fingerprinting arrestees which records and transmits fingerprint data electronically. If there are electronic records of such searches that currently exist, those records are to be produced, even if "fingerprint cards" do not exist.

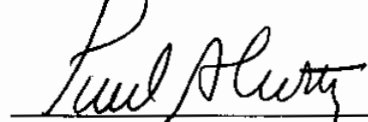
(4) As to substantiated complaints of misconduct against Police Officer Fraundorfer, the City represents, yet again, that there are no complaints that have been substantiated. Accordingly, Plaintiff's request is denied, as it has been in the past.

(5) Plaintiff's request that Police Officer Fraundorfer file an affidavit to the effect that "he did not investigate any warrants against plaintiff" is denied. Plaintiff will be able to inquire into these matters when he deposes Police Officer Fraundorfer, so that filing an affidavit is both unwarranted and unnecessary.

Now that all pending discovery disputes are resolved, the Court grants Plaintiff's request for change of venue, pursuant to 28 U.S.C. § 1404(b). While it is unusual for Plaintiff to move for a change of venue, the Court grants the request because the underlying incident and all subsequent events occurred in the Eastern District of New York, and, in any event, the case would have been better instituted in the Eastern District of New York in the first instance. The Clerk of Court is directed to transfer this case to the Eastern District of New York pursuant to 28 U.S.C. § 1404(b).

Dated: New York, New York
January 24, 2008

SO ORDERED

A handwritten signature in black ink, appearing to read "Paul A. Crotty", is written over a horizontal line.

PAUL A. CROTTY
United States District Judge